

REMARKS

Status of the Claims.

Claims 1-18, 38, 39, 47, 49, and 56-67 are pending with entry of this amendment, claims 19-37, 40-46, 48, and 50-55 being previously canceled and claims 63-67 being previously added. Claims 1, 38, and 47 are amended herein. These amendments introduce no new matter. Support is replete throughout the specification, *e.g.*, at page 28, line 32, through page 29, line 3, and the like.

Telephone interview with the Examiner.

Applicants thank Examiner Ungar for the courteous and productive telephone interview on September 26, 2006. In that interview discussions were drawn to the new matter rejection of record. Applicants pointed to pages 28-29 for support for an amendment drawn to a 95% confidence level rather than a 95% percentile level as recited in the claims prior to the present amendment. The Examiner indicated that it appears that the proposed amendment will overcome the rejection of the claims and will render the claims allowable.

35 U.S.C. §112, first paragraph.

Claims 1-18, 63, 65, and 67, were rejected under 35 U.S.C. §112, first paragraph, as the specification allegedly does not contain a written description for the language "greater than the 9th percentile for YKL-40" added to the claims in the previous amendment.

As discussed with Examiner Ungar, independent claims 1, 38, and 47 are amended herein to recite "... at a confidence level of 95% or greater. . . ." rather than "... greater than the 95th percentile . . . ".

Applicants note that support for this amendment is found at page 28, line 32, through page 29, line 3 which states:

In a particularly preferred embodiment, **the assay is deemed to show a positive result when the difference between sample and "control" is statistically significant (e.g. at the 85% or greater, preferably at the 90% or greater, more preferably at the 95% or greater and most preferably at the 98% or greater confidence level).** [emphasis added]

The amended claims thus clearly find support in the specification. Accordingly, the new matter rejection under 35 U.S.C. §112, first paragraph, should be withdrawn.

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. Should the Examiner seek to maintain the rejections, Applicants request a telephone interview with the Examiner. If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (510) 267-4161.

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Respectfully submitted,



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